

35% cap after March 8, 1996.⁵⁸ They did so in the face of the Commission's clear and explicit warning that divestiture might ultimately be required. In these circumstances, there would be no inequity or unfairness were the Commission to adopt new rules that would require such divestiture.

Grandfathering, moreover, would work at cross-purposes with the very objective of deregulation. Deregulation is desirable because it eliminates the market distortions caused by governmental regulations and instead allows the operation of the free market to dictate success and failure, winners and losers. Perversely, deregulation with grandfathering preserves the very market distortion qualities that deregulation is trying to eliminate. Grandfathering would give Fox and Paxson a key competitive advantage -- a higher level of guaranteed network circulation through station ownership made possible only by regulation. If the creation of a free marketplace is truly the objective -- and it should be -- there is no rational basis for the government to confer a regulatory- based advantage on some network competitors to the disadvantage of others.

⁵⁸See Exhibits B and C hereto.

II. Dual Network Rule

Under the direction of Congress in section 202(e) of the Telecom Act, the Commission revised its "dual network" rule⁵⁹ to narrow substantially the multiple interests barred by the rule.⁶⁰ The rule previously prohibited a television licensee from affiliating with a network organization that operated more than one network of television broadcast stations. The revised rule now forbids, as a practical matter, only the joint ownership of two or more of the four major networks (ABC, CBS, FOX, NBC), or any of those four networks and one of the two emerging networks (WB, UPN).⁶¹

Plainly, the traditional model of the broadcast networks is under considerable competitive pressure from non-broadcast video program services. The broadcast networks' diminishing audience share has been noted above. More than one media commentator has remarked on the startling fact that of the cable and broadcast networks that made a profit this year, only one was a broadcast

⁵⁹47 C.F.R. §73.658(g).

⁶⁰See Order, 11 FCC Rcd 12374, 3 CR 363 (1996).

⁶¹See Notice, par. 24. Notably, in a precursor version of the Telecom Act. H.R. 1555, the relevant provision barred any Commission regulation that prohibited joint ownership of two or more networks of broadcast stations. H.R. Rep. 104-204, Part I, 104th Cong., 1st Sess., 118 178 (1995).

network.⁶² As the free broadcast networks struggle to compete with cable and satellite services -- which enjoy the dual revenue stream from advertising and subscribers -- they require maximum flexibility to respond to the changing marketplace.⁶³

To survive, and to continue to offer viewers the unique combination of national and locally oriented programming that is the hallmark of the network/affiliated station partnership, the broadcast networks must be allowed the flexibility to re-invent and restructure their businesses. The remaining parts of the dual network rule serve as an artificial and unnecessary constraint on the ability of networks to do so. Were any of the existing networks to seek consolidation, there is simply no reason why antitrust enforcement would not provide an adequate means to prevent undue concentration that would harm competition.

Nor would a network combination pose any real threat to diversity. As noted above, the Commission has determined that diversity analysis must focus on local markets, with a primary concentration on local news and public affairs.⁶⁴ Even if one entity were to operate two networks, each with a separate affiliate

⁶²LaFayette, "Main Course for Broadcasters is Digital Dish," Electronic Media, April 13, 1998 (Robert Iger, ABC); LaFayette, "Affiliates Take Stand on NFL," Electronic Media, Feb. 9, 1998 (Neil Braun, NBC).

⁶³See 1995 Further Ownership Notice, pars. 6-7.

⁶⁴1995 Further Ownership Notice, par. 72; Notice, par. 52.

station in a single market, those affiliates would each continue separately to serve their communities by providing separate local news and information programming. The fact that one company might own the two networks providing national programming would have no real impact on the diversity of programming offered in any community, particularly given the exponential growth in available alternative outlets.

III. Broadcast/Newspaper Rule

The daily newspaper/broadcast cross-ownership rule was adopted in 1975 and prohibits joint ownership of a broadcast station and a daily newspaper serving the same area.⁶⁵ While the rule seeks to preserve both diversity and competition, the Commission's principal objective in adopting the rule was to promote diversity.⁶⁶ We submit that, in view of the explosion of available outlets, any remaining concerns about diversity are too conjectural to warrant maintaining government restraints on efficiency and innovation.⁶⁷

⁶⁵47 C.F.R. §73.3555(d).

⁶⁶See Second Report and Order, 50 FCC2d 1046, 32 RR2d 954, pars. 99, 112 ("1975 Newspaper Order"), on recon. 53 FCC 2d 589, 33 RR2d 1603 (1975), aff'd sub nom., FCC v. Nat'l Citizens Comm. for Broadcasting, 436, U.S. 775 (1978).

⁶⁷The growth in local media choices has mandated the relaxation of many of the ownership restrictions that were in place in 1975. See 1984 Ownership Order (national TV ownership rules); Second Report and Order, 4 FCC Rcd 1741, 65 RR2d 1589, on reconsideration, 4 FCC Rcd 6489, 66 RR2d 1115 (1989) (one-to-a-market rule); Report and Order, 7 FCC Rcd 2755, 70 RR2d 903, on reconsideration, 7 FCC

To the extent that the rule is designed to forestall the creation of market power which would harm competition, reliance on antitrust enforcement would adequately protect the public against anticompetitive results.⁶⁸

IV. Local Radio Ownership Rule

The relaxation of the radio ownership rules mandated by the Telecom Act has unleashed a torrent of transactions. According to a Wall Street Journal report last September, one quarter of the nation's radio stations had changed hands during the preceding twenty months.⁶⁹ The resulting combinations have made radio a stronger competitor in competing against newspapers for

Rcd 6387, 71 RR2d 227 (1992), on further reconsideration, 9 FCC Rcd 7183, 76 RR2d 698 (1994) (radio duopoly).

⁶⁸This is the first proceeding since the Commission adopted the rule in 1975 in which the Commission is engaged in a broad review of the newspaper/broadcast rule to consider whether to retain, modify or repeal it. In 1996, the Commission opened an inquiry which was limited to the narrower question of whether to amend the waiver policy under the rule with respect to newspaper/radio combinations only. (Notice of Inquiry in MM Docket No. 96-197.) ABC filed comments in that proceeding in which we urged the Commission to substantially relax the waiver policy. Should the Commission decide to relax the waiver policy, instead of repealing the rule as we would urge the Commission to do here, we refer to the Commission to our comments in the earlier proceeding for our proposal with respect to the waiver policy.

⁶⁹"A Wave of Buyouts Has Radio Industry Beaming with Success," Wall Street Journal, September 18, 1997 ("WSJ article").

advertising.⁷⁰ The Notice recognizes that "publicly traded companies whose primary business is radio broadcasting are experiencing robust financial performance" and that "the observed consolidation of the radio industry appears to have had positive financial consequences for these radio companies."⁷¹ The Notice request comment on the effect of the relaxation of the radio ownership rules on competition and asks whether the rule should be further modified.

We believe that the same reasoning set out above with regard to the other broadcast rules applies with equal force to the radio ownership rules. Elimination of the rules will enable radio broadcasters to compete more effectively with one another and with other media. If a particular radio combination threatens to create market power which would have anticompetitive effects, antitrust enforcement can be relied upon to preclude the transaction. Indeed as the Commission is aware, the Justice Department has been extremely active in reviewing radio transactions.⁷²

The Commission also seeks comment on the impact of the

⁷⁰Id., quoting Miles E. Groves, Chief Economist of Newspaper Association of America.

⁷¹Notice, par. 20.

⁷²"FCC Looks at Local Radio Deals," Broadcasting and Cable, June 8, 1998, page 10, reporting that the Justice Department agreed to review six radio transactions in May of 1998. WSJ article, reporting that six Justice Department attorneys are evaluating radio mergers full time and that the agency has forced a number of mergers to be scaled back.

relaxation of the radio ownership rules on diversity. As we said earlier in our discussion of the national ownership cap, we believe that the proper measure of diversity is all the media available to consumers in the particular local area. Thus, television, radio, cable, DBS, newspapers, video cassettes, yellow pages, and direct mail and, increasingly, the Internet, are all part of the local market for diversity purposes. Since the relevant market for antitrust analysis would be no broader than the market for diversity purposes and might be narrower, antitrust enforcement would ensure that undue economic concentration would be foreclosed well before there was any material effect on diversity.

V. TV/Cable Cross-Ownership Rule

Among the rules that are the subject of Commission review in this proceeding, the cable/television cross-ownership rule is the one rule where we believe deregulation would be premature. The rule effectively prohibits common ownership of a broadcast television station and a cable system serving the same community.⁷³ The rule was adopted in 1970 to serve the same competition and diversity objectives as those served by its broadcast "duopoly" rule, which barred common ownership of two TV broadcast outlets

⁷³47 C.F.R. 76.501(a).

serving the same area.⁷⁴ The Commission was concerned that a TV-cable combination might lead to an over-concentration of media control in local markets where entry is limited and there are few competitive alternatives.⁷⁵

The same concerns counsel against eliminating the rule at this time. As the Commission concluded in its most recent review of the television marketplace, "the cable industry continues to occupy the dominant position in the MPVD marketplace" and local MPVD markets remain "highly concentrated".⁷⁶ Given these market conditions, joint ownership of cable and broadcast properties within a given community continues to present a level of risk that is different in kind and in degree from the business combinations prohibited by the other regulations discussed above. For that reason, we would support retention of the cross-ownership rule, but subject to periodic reconsideration.

⁷⁴Second Report and Order, 23 FCC2d 816, 19 RR2d 1775, par. 12 (1970) ("TV/Cable Order"), on recon., 39 FCC2d 377, 26 RR2d 739 (1973). In the previous year, the Commission had required most cable systems to engage in program origination, so as to act as "local outlets" for the communities they served. First Report and Order, 20 F.C.C.2d 201, 17 RR2d 1570 (1969).

⁷⁵TV/Cable Order, par. 12. Section 613(a)(1) of the Communications Act was enacted in 1984 and contained a parallel ban on local television/cable cross-ownership. Section 613(a)(1) was repealed by Section 202(i) of the Telecom Act. See Notice, par. 45, n. 71.

⁷⁶1997 Video Rep., par. 7.

CONCLUSION

For the reasons discussed above, we urge the Commission to repeal the national television ownership rule, the dual network rule, the daily newspaper/broadcast rule and the local radio ownership rule. We support retention of the television/cable cross-ownership rule subject to periodic reconsideration.

Respectfully submitted,

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July 21, 1998

SIGN-ON/SIGN-OFF RANK OF #1 LOCAL EARLY EVENING NEWS STATIONS
MAY 1998

Exhibit A

Market Ranks 1 - 10

<u>Rank</u>	<u>Market</u>	<u>#1 Station Local Early Evening News</u>	<u>#1 Station SO/SO (7:00am-1:00am)</u>	<u>#1 Local Early Evening News Ownership</u>	<u>Group Owner (3+ TV Stations)</u>
1	New York	WABC	WNBC	ABC, Inc.	Y
2	Los Angeles	KNBC	KABC	NBC	Y
3	Chicago	WLS	same	ABC, Inc.	Y
4	Philadelphia	WPVI	same	ABC, Inc.	Y
5	San Francisco	KGO	KRON	ABC, Inc.	Y
6	Boston	WCVB	WHDH	Hearst-Argyle	Y
7	Washington, DC	WRC	same	NBC	Y
8	Dallas	WFAA	same	A.H. Belo Corp.	Y
9	Detroit	WDIV	same	Post-Newsweek, Inc.	Y
10	Atlanta	WSB	same	Cox Enterprises, Inc.	Y

Market Ranks 41 - 50

<u>Rank</u>	<u>Market</u>	<u>#1 Station Local Early Evening News</u>	<u>#1 Station SO/SO (7:00am-1:00am)</u>	<u>#1 Local Early Evening News Ownership</u>	<u>Group Owner (3+ TV Stations)</u>
41	New Orleans	WWL	same	A.H. Belo Corp.	Y
42	Memphis	WREG*	same	New York Times Co.	Y
43	West Palm Bch-Ft. Prce, FL	WPTV	same	Scripps Howard	Y
44	Oklahoma City, OK	KFOR	same	New York Times Co.	Y
45	Harrisburg-Lancaster-Leb-Yk	WGAL	same	Pulitzer Broadcasting Co.**	Y
46	Greensboro-High Point	WFMY	same	Gannett Broadcasting Group	Y
47	Wilkes Barre-Scranton, PA	WNEP	same	New York Times Co.	Y
48	Albuquerque-Santa Fe	KOAT+	same	Pulitzer Broadcasting Co.**	Y
49	Providence, RI-New Bedfd, MA	WJAR	same	NBC	Y
50	Louisville, KY	WHAS	same	A.H. Belo Corp.	Y

Market Ranks 91 - 100

<u>Rank</u>	<u>Market</u>	<u>#1 Station Local Early Evening News</u>	<u>#1 Station SO/SO (7:00am-1:00am)</u>	<u>#1 Local Early Evening News Ownership</u>	<u>Group Owner (3+ TV Stations)</u>
91	Burlington, VT-Plattsbrgh, NY	WCAX	same	Mount Mansfield TV, Inc.	N
92	Johnstown-Altoona	WTAJ	same	Gateway Communications	Y
93	Tri-Cities, TN-VA	WCYB	same	Lamco Communications Co.	Y
94	Colorado Springs-Pblo, CO	KKTU	same	Ackerley Comm. Inc.	Y
95	Evansville	WFIE	same	Cosmos Broadcasting Corp.	Y
96	Waco-Temple-Bryan	KWTX	same	KWTX Broadcasting Co.	N
97	Youngstown, OH	WKBN	same	GOCOM Television	Y
98	Baton Rouge	WAFB	same	Raycom Media, Inc.	Y
99	El Paso, TX	KTSM	same	Tri-State Broadcasting**	N
100	Savannah, GA	WTOG	same	Raycom Media, Inc.	Y

Market Ranks 141 - 150

<u>Rank</u>	<u>Market</u>	<u>#1 Station Local Early Evening News</u>	<u>#1 Station SO/SO (7:00am-1:00am)</u>	<u>#1 Local Early Evening News Ownership</u>	<u>Group Owner (3+ TV Stations)</u>
141	Sioux City, IA	KTIV	same	Quincy Broadcasting Co.	Y
142	Medford-Klamath Falls	KDRV+	same	Chambers Comm. Corp.	Y
143	Erie, PA	WJET	WSEE	Nexstar Broadcasting Group	Y
144	Wichita Falls & Lawton	KFDX	same	Nexstar Broadcasting Group	Y
145	Columbia-Jefferson City	KRCG	same	Mel Wheeler, Inc.	Y
146	Joplin-Pittsburg	KOAM	same	Saga Communications Inc.	N
147	Lubbock, TX	KCBD	same	Holsum Inc.	N
148	Albany, GA	WALB	same	Gray Comm. Systems Inc.**	Y
149	Bluefield-Beckley-Oak Hill	WVVA	same	Quincy Broadcasting Co.	Y
150	Odessa-Midland, TX	KWES+	same	R.H. Dewry Group	Y

* New Orleans - Local news tie with WMC/NBC.

** Sale Pending

Source: NSI, May 1998 Survey Period.

FOX OWNED TELEVISION STATIONS

<u>Mkt Rank</u>	<u>Market Name</u>	<u>% Cvg.</u>	<u>Station Call Ltrs</u>	<u>Ch. #</u>	<u>Date of Acquisition</u>	<u>Total Homes (full value)</u>	<u>Total Homes (uhf discount)</u>
1	New York	6.90	WNYW	5	11/14/85	6,755,510	6,755,510
2	Los Angeles	5.12	KTTV	11	11/14/85	5,009,230	5,009,230
3	Chicago	3.21	WFLD	32	11/14/85	3,140,460	1,570,230
7	Washington, DC, Hagerstown	1.97	WTTG	5	11/14/85	1,928,290	1,928,290
11	Houston	1.66	KRIV	26	11/14/85	1,624,340	812,170
36	Salt Lake City	0.71	KSTU	13	2/16/90	690,310	690,310
	<i>Satellite (LPTV)</i>		KDLQ	55			
6	Boston	2.22	WFXT	25	6/7/95	2,174,300	1,087,150
42	Memphis	0.63	WHBQ	13	6/7/95	614,050	614,050
46	Greensboro-H.Point-W.Salem	0.59	WGHP	8	6/7/95	577,070	577,070
51	Birmingham	0.56	WBRC	6	6/7/95	546,620	546,620
18	Denver	1.22	KDVR+	31	6/13/95	1,198,580	599,290
	<i>Satellite</i>		KFCT	22	6/16/95		
4	Philadelphia	2.72	WTFX	29	8/14/95	2,659,260	1,329,630
Totals 12 stations + 2 satellites (No UHF Discount)		27.49	26,918,020			26,918,020	21,519,550
Totals 12 stations + 2 satellites (With UHF Discount)		21.97	21,519,550				

As of 3/8/96

8	Dallas-Ft. Worth	1.94	KDFW	4	11/7/96	1,899,330	1,899,330
9	Detroit	1.82	WJBK	2	11/7/96	1,781,710	1,781,710
10	Atlanta	1.71	WAGA	5	11/7/96	1,674,700	1,674,700
13	Cleveland	1.50	WJW	8	11/7/96	1,469,010	1,469,010
15	Tampa-St. Pete, Sarasota	1.47	WTVT	13	11/7/96	1,435,520	1,435,520
17	Phoenix	1.32	KSAZ	10	11/7/96	1,289,210	1,289,210
21	St. Louis	1.13	KTVI	2	11/7/96	1,108,930	1,108,930
31	Milwaukee	0.81	WITI	6	11/7/96	790,660	790,660
32	Kansas City	0.81	WDAF	4	11/7/96	791,800	791,800
63	Austin	0.46	KTBC	7	11/7/96	452,430	452,430
Totals 22 stations + 2 satellites (No UHF Discount)		40.45	39,611,320			39,611,320	34,212,850
Totals 22 stations + 2 satellites (With UHF Discount)		34.93	34,212,850				

PAXSON COMMUNICATIONS CORP.
OWNED and/or OPERATED FULL POWER TV STATIONS

<u>Market Rank</u>	<u>Market Name</u>	<u>% Cvg.</u>	<u>Station Call Letters</u>	<u>Channel #</u>	<u>Date of Acquisition</u>	<u>Total Homes (full value)</u>	<u>Total Homes (uhf discount)</u>
1	New York	6.89	WIPX	43	02/21/96	6,755,510	3,377,755
2	Los Angeles	5.12	KPXN	30		5,009,230	2,504,615
4	Philadelphia	2.72	WPPX	61		2,659,260	1,329,630
5	San Francisco-Oak-San Jose	2.35	KKPX	65		2,297,880	1,148,940
6	Boston	2.22	WPXB	60		2,174,300	1,087,150
7	Washington, DC,Hagerstown (CP only)	1.97	WWPX	60		1,928,290	964,145
10	Atlanta	1.71	WPXA	14		1,674,700	837,350
11	Houston	1.66	KPXB	49		1,624,340	812,170
13	Cleveland	1.50	WWPX	23	12/08/95	1,469,010	734,505
27	Hartford & New Haven	0.94	WHPX	26		915,770	457,885
43	West Palm Beach	0.61	WPBF	25		593,480	296,740
Totals 11 stations (No UHF Discount)		27.67	27,101,770			27,101,770	13,550,885
Totals 11 stations (With UHF Discount)		13.84	13,550,885				

Source: September 1997 NSI U.S. Television Estimates
Television Cable Factbook Stations Volume 64, 1996 Edition; Volume 65, 1997 Edition

As of 3/8/96

Current Totals 55 Stations (No UHF Discount)	61.40
Current Totals 55 Stations (With UHF Discount)	30.90

Source: Broadcasting and Cable Magazine April 6, 1998

FILE: G/RES/STA/OWN/PAXSON1
7/10/98

Exhibit C